

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

GREGORY LAMAR PRICE-IL,

Plaintiff,

v.

Case Number 08-14472-BC
Honorable Thomas L. Ludington

PHILLIP A. RAGAN, JR.,

Defendant.

**SUPPLEMENTAL ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION AND OVERRULING PLAINTIFF'S OBJECTION**

On December 5, 2008, Magistrate Judge Charles E. Binder issued a report and recommendation that the Court sua sponte dismiss Plaintiff's complaint as for lack of subject matter jurisdiction. On December 22, 2008, the Court adopted the report and recommendation on the basis that none of the parties to this action filed objections. On that same day, Plaintiff Gregory Lamar Price-II filed a response brief to Defendant Phillip A. Ragan, Jr.'s motion to dismiss. While the magistrate judge recommended dismissing the complaint for reasons independent of Defendant's motion to dismiss, the Court will liberally construe the pleading to evaluate any reasonable objections to the report and recommendation. *Cf. Haines v. Kerner*, 404 U.S. 519-520-21 (1972).

Magistrate Judge Binder recommended that the Court sua sponte dismiss Plaintiff's complaint because it advances a 42 U.S.C. § 1983 claim against Defendant, a private attorney retained by Plaintiff in a criminal matter. As the report noted, a private attorney, whether retained or appointed by a court, is not considered a state actors subject to liability under 42 U.S.C. § 1983. Dkt. # 5 at 3 (citing *Polk County v. Dodson*, 454 U.S. 325 (1981) and *Mills v. Criminal Dist. Court No. 3*, 837 F.2d 677, 679 (6th cir. 1988)). Consequently, the Court would not have jurisdiction over

the complaint on the basis of 28 U.S.C. § 1331. The magistrate judge also observed that underlying claims of legal malpractice would not provide the federal court with subject matter jurisdiction. *Id.* Plaintiff's response brief does not provide any authority or argument in support of the proposition that Defendant acted under the color of law. Rather, it recites the text of 42 U.S.C. § 1983 and other alleged causes of action. The inclusion of these statutory citations does not address the defect in the Court's jurisdiction identified in the report and recommendation.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation [Dkt. # 5] is **ADOPTED**.

It is further **ORDERED** that Plaintiff's response brief, construed as an objection, [Dkt. # 6] is **OVERRULED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: January 6, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on January 6, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS